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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/776,666

02/11/2004

Tushar Patel

101896-0233

3475

21125

7590

07/06/2006

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EXAMINER

PELLEGRINO, BRIAN E

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/776,666		PATEL ET AL.	
	Examiner		Art Unit	
	Brian E. Pellegrino		3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-44,46-54 and 86-93 is/are pending in the application.
- 4a) Of the above claim(s) 25,29,32,39-44,46,47 and 49-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,11-23,26-28,30,31,33,36-38,48 and 91-93 is/are rejected.
- 7) ☒ Claim(s) 8-10,24,34 and 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/17/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 46 is objected to because of the following informalities: the claim depends from a cancelled claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,14,26,27 are rejected under 35 U.S.C. 102(b) as being anticipated by Asher et al. (4773402). Fig. 1 shows an elongate support member with first and second arms **28,29** coupled to the support. Fig. 4 shows the elongate support member **58** being curved. The arms are fully capable of sliding along arcuate portions **55,56** of the elongate member. Each of the arms has a guide member 60,61 respectively mated at a distal end of the arms. The central portion of guide member **63** has a pathway that is fully capable of being aligned with a bore of an implant.

Claims 26,28,30,31,33 are rejected under 35 U.S.C. 102(b) as being anticipated by Kluger (4733657). Fig. 1 shows an adjustable guide member having a first member with an elongate support **4** and a first arm **11** mated to one end and extends transverse to the support member and includes a guide member **9** at a distal end of the arm. It can also be seen there is a second arm **5** with a first end adapted to slidably mate with the elongate support member and has an adjustment mechanism **6** to allow sliding

movement along the support member. The second arm also has a second guide member at its distal end. It can also be seen the distal portion of the arms extend at an angle with respect to the proximal portion. The guide members have a hollow pathway forming a barrel extending transverse to arms capable of receiving a tool. Each guide member has proximal and distal portions with opposed first 8 and second 13 pathways respectively to receive a pin. Since the pin is cylindrical the sidewalls of the pathways have two semi-cylindrical sidewalls.

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Claims ~~1~~3-7, 11-13, 15-23, 26, 28, 30, 31, 36-38, 48, 86-93 are rejected under 35 U.S.C. 102(b) as being anticipated by Coates et al. (5423826). Coates discloses (Fig. 17) a guide device for use with a spinal fixation plate with the device having two movable arms 151, 152 and first and second guide members 157 coupled at the distal end of the arms. It can be seen there are cutout portions between notches 161 or tabs or C-shaped hooks in the guide member to receive the plate and oppose each other. Fig. 16 shows the guide member 157 includes first and second pathways 158. It can be construed that rod 155 is an elongate support member and extends transverse to the arms. Additionally, the arms have a distal portion that is at an angle to the proximal portion (Figure 20). Each guide member (157) comprises a housing with opposed first and second pathways (Figure 16) where the housing or guide member contains a lumen sleeve (180) which has a rounded tip extends through the barrel into the rounded recess of the accompanying plate. Each pathway in the guide is in communication with each other via a cut out at a distal portion formed in the housing between the first and second pathways (Figure 16) where the cut out portion extends from the housing where

the pathways (158) are in communication through the body of the guide. The support member (155) has adjustment knob (154), which allows either arm to move along the adjustment threads of the lockable support member (column 13 lines 50-67).

Response to Arguments

Applicant's arguments filed 3/30/06 have been fully considered but they are not persuasive with respect to claim 91. Coates clearly discloses a guide member **157** at each distal end of the arms and has cutouts in the guide member to receive a bone plate. The two guide members clearly oppose one another such that it can be construed that they are opposed cutout portions as claimed. Additionally, Applicant argues that the guide member does not have two pathways, but the prior office action clearly pointed this out as Fig. 16 illustrates two pathways **158** in the guide member **157**. Applicant also argues that the arms of Coates do not slide along an elongate support, however, this is not persuasive because clearly the elongate support member moves along the arms even as Applicant admits on page 12 of the amendment. Any surgeon can make "smooth adjustments" with the knob of Coates device to permit a "smooth movement" of the arms along the elongate member. The claims do not recite a "smooth" elongate member and thus Coates reads on the claims.

Allowable Subject Matter

Claims 8-10,24,34,35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on Monday-Thursday from 7:30am to 5pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738

BRIAN E. PELLEGRINO
PRIMARY EXAMINER

Brian E. Pellegrino